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C O N F I D E N T I A L SECTION 01 OF 07 KABUL 001193

SIPDIS

NSC FOR ZKHALILZAD, JDWORKEN, HMANN, RHANSON, DSEDNEY
DEPT FOR SA/PAB, SA/AR, EB/FO
MANILA PLEASE PASS AMB PSPELTZ
USDOC FOR DAS/TD MURPHY AND AFGHAN RECON TASK FORCE
STATE PASS USAID FOR JPRYOR
STATE PASS TDA FOR DSTEIN AND JSUSSMAN
STATE PASS TREASURY FOR U/S TAYLOR, LMCDONALD
STATE PASS OPIC FOR RCONNELLY AND DZAHNHEISER

E.O. 12958: DECL: 05/09/2013
TAGS: EINV ECON ETRD AF PTGOV
SUBJECT: UPDATE ON FIDELITY INTERNATIONAL CEMENT PRODUCTION PROJECT

Classified By: AMBASSADOR ROBERT P. FINN FOR REASONS 1.5 (B) AND (D)

¶1. (U) This is an action request. Please see paragraph 15.

¶2. (C) Summary: From April 22 to 29, Texas-based Fidelity International was in Kabul to pursue a $1.8 billion cement deal with the Afghan government. Substantial progress was made, including the granting of an investment license by the High Commission for Investment. Given the size and impact of the proposed deal, the terms are being reviewed at the highest levels of the Afghan government. Among the chief Afghan concerns was Fidelity,s request for market exclusivity that they perceive will create a &monopoly8 in the cement sector. Fidelity, for its part, appears willing to negotiate but is growing frustrated by what it views as the Afghan government renegotiating the deal repeatedly due to unclear decision-making authority. A four-minister Task Force led by the Minister of Reconstruction is currently preparing the Afghan government,s counterproposal to Fidelity,s terms. The Task Force is scheduled to complete its work and offer its counterproposal o/a May 7. Despite many ups and downs, the deal for this critically needed investment in a key reconstruction sector is still very much alive. End Summary.

¶3. (C) The principal investors from Fidelity International visited Kabul from April 22 to 29. Fidelity International,s management team includes several of the American businessmen who made up the failed Box-Alcali cement investment proposal that has languished in the Ministry of Mines and Industries since March 2002. The new firm, Fidelity, now includes W. Tompie Hall, whose experience includes reconstruction efforts in post-Gulf War Kuwait in the early 1990s. Box International is now responsible for the feasibility study and the operation of the cement factories. Box,s former Turkish joint venture partner, Alcali, is no longer involved in the project. In advance of this visit, Fidelity Representatives Tompie Hall and Terry Ritter met with officials at the Departments of State and Commerce. In addition, they made clear early on that they wanted to work closely with the Embassy) an omission from the Box-Alcali proposal that they wished to remedy.

¶4. (C) Substantial progress was made between 4/22 and 4/29. The negative feelings that the failed Box-Alcali deal had created were overcome. (Note: The Box-Alcali deal rubbed both Minister Ghani and the late Minister of Mines and Industry Mohammedi the wrong way due to lease provisions which conveyed the required land for one dollar. Also, the Alcali side of the deal employed a purported fixer who misrepresented his influence with the Afghan government and raised suspicions of Box-Alcali,s legitimacy through his clumsy application of political pressure. End note.) The Fidelity team met early on with the Ambassador and the Minister of Commerce. The Minister of Commerce discussed the message immediately with President Karzai, who strongly supported the project. Karzai appointed Minister of Reconstruction Farhang to finalize the deal.

¶5. (C) Minister Farhang convened a meeting on April 23 to hear the proposal,s terms in detail and raise preliminary points requiring further discussion. In addition to Fidelity,s senior and in-country representatives and Econ/Commoff, also attending were Acting Minister of Mines and Industry Nadi, Minister of Commerce Kazemi and working level representatives from the Ministry of Foreign Affairs and the Ministry of Planning. Fidelity presented its proposal, which called for the creation of the National Afghan Cement Company, in which the Afghan Government would hold a 15 percent share. The project was set to begin with a program for rehabilitating one of the two defunct state-owned cement factories in Pol-e Khomri while concurrently conducting feasibility studies for the construction of three other cement factories in other regions of the country. Fidelity was prepared to provide a 25MW power plant for each

factory. In addition, Fidelity was prepared to develop, excavate and transport required raw materias) all of which it was prepared to pay for at fair market rates. Fidelity estimated that the project would create 8,000 direct jobs and up to 90,000 indirect jobs. The total estimated investment for the four factories is $1.8bn.

¶6. (C) While the Afghan government representatives had several technical issues of concern, the only truly contentious issue was Fidelity,s request for market exclusivity for its product. Fidelity maintained that, since it would essentially develop the entire infrastructure for the cement industry in Afghanistan, it would be unfair to allow others to come in later and take advantage of all of Fidelity,s preparatory work and significant investment. Also, Fidelity was concerned over the continued Pakistani practice of predatory cement dumping on the Afghan market and its negative effect on its expected market share. In response to Afghan concerns over monopoly, Fidelity insisted that it would maintain a fair market price for their cement. Fidelity added that the commercial viability of the project would be eroded substantially without such a provision.

¶7. (C) After making the changes requested by the Afghan side, including revised exclusivity terms, Fidelity presented their &conveyance agreement8 and investment license for approval to the High Commission for Investment. On April 26, the High Commission for Investment called in Fidelity, joined by the Econ/Commoff, for a review of its license application. The High Commission was composed of the Minister of Commerce, the Minister of Foreign Affairs, the Minister of Reconstruction, the Acting Minister of Mines and Industry, the Minister of Justice, and the Deputy Minister of Planning. After extensive discussion with the Fidelity parties over the terms of the agreement, mostly pertaining to the still-troublesome &monopoly8 provisions contained in the agreement, the High Commission convened privately and approved the investment license.

¶8. (C) After informing Fidelity that their license was approved by the HCI, Fidelity sought clarification of the meaning of the license and accompanying agreement) was it merely an MOU or did it constitute a binding contract? The HCI responded that the license and attached agreement was only an MOU. Fidelity responded that a binding agreement would be required to arrange necessary financing for the deal. The HCI concluded that for the agreement to constitute a contract, given the size and impact of the deal, it would have to be reviewed by the &Coordination Council8) a senior body chaired by President Karzai, which apparently served as an economic version of the National Security Council. For this to be possible, the HCI requested that Fidelity have the agreement translated into Dari for presentation and review by the Ministry of Justice and the Ministry of Mines and Industry the following day. Justice wanted to make certain that the appropriate Dari terms were used in the agreement, and Mines and Industries wanted to confirm that the &technical terms8 were clear.

¶9. (C) On April 27, the Coordination Council deliberated over the Fidelity agreement. Vice President Amin Arsala served as President Karzai,s representative for the meeting. The Coordination Council raised additional concerns, including: needing additional bona fides for the Fidelity principals; clarifying language defining TISA responsibilities to support the project) which could be interpreted as creating a sovereign guarantee; specifying raw materials involved; providing a more specific definition of what the 15% Afghan government share entailed; resolving outstanding loans due to the former Czechoslovakia on the Pol-e Khomri factories ($20m and $40m); overcoming lingering concerns about monopoly terms; and establishing performance benchmarks.

¶10. (C) The Coordination Council created a task force to prepare the Afghan governments rejoinder to Fidelity,s proposed terms within 10 days. The task force was led by Minister of Reconstruction Farhang and included the Ministers of Light Industries, Urban Development, and Mines & Industries Ministers. The Fidelity principles, Mr. Hall and Mr. Ritter left Kabul the day after the Coordination Council meeting frustrated by their perception that the Afghan government kept reopening previously negotiated terms. They were reluctant to continue negotiations for much longer.

¶11. (C) Daoud Yaqoub of the National Security Council contacted Econ/Commoff on 4/28 to discuss the status of the Fidelity deal. Daoud met briefly with Econ/Commoff and then accompanied him to a meeting with Minister Farhang. Farhang emphasized that the deal was still alive, and that the TISA only wanted to ensure that it was fair to Afghanistan. Farhang noted that he felt 90-95 percent sure that there would be a positive result within 10 days. Farhang wrote to Mr. Tompie Hall on May 4 thanking him for Fidelity,s visit and explaining the task force,s efforts to resolve outstanding issues. Farhang concluded by saying: Begin quote: I would like to stress that the government of

Afghanistan views your proposal favorably and wishes to see implementation as soon as possible and we look forward to resolving the few remaining issues so that this urgently needed work can commence. End quote.

¶12. (C) Meanwhile, the German advisor to the TISA on trade and investment issues, Dr. Stephen Kinneman, returned to Kabul from Germany and reviewed the agreement. Kinneman,s conclusion was that the deal was not sufficiently fair to the Afghan side. In a May 5 meeting with Ambassador, Kinneman spelled out his concerns over the deal as presently structured. While Kinneman acknowledged that such a sizable investment would greatly benefit Afghanistan and that under current conditions Afghanistan would have to offer premium terms to attract capital, the agreement was nonetheless too slanted towards Fidelity. His chief concern was the creation of a &quasi-monopoly8 for NACC. Kinneman was also concerned that the agreement lacked performance benchmarks, offered no guarantees regarding job creation, and placed undue burdens on the Afghan government. Ambassador agreed that foreign investment was absolutely essential to rebuilding Afghanistan. This was the only way to introduce Afghanistan to modern open economic practices and overcome command economy mindsets. While the deal may not be fairly balanced, it was, however, more likely the Afghan government,s lack of experience and expertise in negotiating terms was more to blame for the imbalance than any overreaching by Fidelity. Econ/Commoff added that international businesses could hardly be expected to negotiate against themselves to make their terms more attractive for Afghanistan.

¶13. (C) What Kinnemann suggested was for the Afghan government to employ legal counsel with sufficient expertise to gain more balanced terms for Afghanistan) not only for the Fidelity deal, but for all such investment deals. Kinneman suggested this would be possible through pro-bono work by interested attorneys. Kinneman confirmed to Ambassador that he was not opposed to the project as a German who was looking for German firms to enter the market) he simply wanted the deal to be fair for Afghanistan. Econ/Commoff noted that Afghanistan could not expect 50/50 balance in terms) otherwise investors could seek such returns in much more secure markets. Kinneman agreed, noting that something closer to 70/30 would be preferable. If the current deal could be portrayed as unreasonably slanted in favor of Fidelity, Ambassador concluded that private advice might help Afghanistan remedy this imbalance.

¶14. (C) Concerns about Fidelity,s bona fides are rumored to have arisen during TISA discussions of the deal, although internal Embassy background checks uncovered no derogatory information. Econ/Commoff has asked Fidelity,s in-country representatives to secure additional biographic and background materials on both Fidelity officials and investors involved in raising the substantial capital the deal purports to deliver. Fidelity has asked that the Department discretely relay the information regarding their investors to the Embassy for the Ambassador,s information. On May 2, Fidelity forwarded additional biographic materials (C.V.s and company information) to Embassy, which were passed to Fidelity, who provided them to the Ministry of Reconstruction. The reason bona fides have taken such prominence in this case is that Fidelity is a new company created to pursue this project and other similar reconstruction-related projects in the region. As such, company history is lacking. Therefore, the Afghan government will place substantially more weight on the bona fides of Fidelity officials and investors.

¶15. (C) Action Request: Embassy requests that Department forward any such information received from Fidelity through secure media to Ambassador and/or Econ/Commoff for appropriate use.

¶16. (C) Comment: The Task Force,s response was due on May 7. Post will provide status updates at appropriate intervals.
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